[Cite as *State v. Little*, 2005-Ohio-400.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

NO. 84611

STATE OF OHIO	:	JOURNAL ENTRY
	:	AND
Plaintiff-appellee	:	OPINION
	:	
-vs-	:	
	:	
WILLIAM LITTLE	:	
	:	
Defendant-appellant	:	

DATE OF ANNOUNCEMENT OF DECISION:	FEBRUARY 3, 2005
CHARACTER OF PROCEEDING:	Criminal appeal from the Court of Common Pleas Case No. CR-449144
JUDGMENT:	Affirmed.
DATE OF JOURNALIZATION:	

APPEARANCES:

For Plaintiff-Appellee:	WILLIAM D. MASON, ESQ. CUYAHOGA COUNTY PROSECUTOR BY: BRIAN MCDONOUGH, ESQ. ASST. COUNTY PROSECUTOR The Justice Center 1200 Ontario Street, 8th Fl. Cleveland, Ohio 44113
For Defendant-Appellant:	THOMAS A. REIN, ESQ. Leader Building, Suite 930 526 Superior Avenue

Cleveland, Ohio 44114

ANN DYKE, P.J.:

{¶ 1} Defendant William Little appeals from his conviction for failing to comply with the order of a police officer. For the reasons set forth below, we affirm.

{¶ 2} On February 27, 2004, defendant was indicted for failing to comply with the order of a police officer, in violation of R.C. 2921.331, with a furthermore clause alleging that defendant operated a vehicle in a manner that caused a substantial risk of serious harm. Defendant pled not guilty and the matter proceeded to a jury trial on April 15, 2004.

{¶ 3} For its case, the state presented the testimony of Cleveland Police Officers Shamode Wimberly, Brian Kluth, Adrian Neagu and Alex DiMatteo.

{¶ 4} Officer Wimberly testified that at approximately 3:00 a.m. on January 20, 2004, she and her partner were patrolling Rocky River Drive in a marked police cruiser. While traveling northbound, they observed a dark-colored, two-door vehicle traveling southbound. The lights of the vehicle were out and the car had front end damage.

{¶ 5} Wimberly's unit turned around and activated its lights and siren to stop the other vehicle. The vehicle pulled to the side and slowed but did not stop. Officer Wimberly noted the license plate number and observed four occupants. The dispatcher

reported that the vehicle was stolen. The vehicle abruptly sped off, nearly hitting a truck, and Wimberly's unit pursued it.

{¶ 6} According to Officer Wimberly, the car accelerated to speeds up to fifty miles per hour, proceeded erratically, and went through a red light. The car struck a curb at Martha Avenue and West 170th Street and spun around. Officer Wimberly observed defendant exit the driver's seat and flee from the scene. Finally, Officer Wimberly established that the vehicle had two front seats separated by a console.

{¶ 7} Officer Kluth testified that at approximately 3:00 a.m., he received a call to assist another vehicle in pulling over a car. They later arrived to the location where the vehicle had been abandoned and received a description of the driver. Officer Kluth and his partner observed defendant and ordered him to stop but he did not do so. Defendant finally hid behind a garage and was apprehended.

{¶ 8} Officer Neagu, Kluth's partner, testified that he followed tracks leading from the point where the car had been abandoned and found defendant hiding behind a garage. Officer Wimberly subsequently identified him as the driver of the car and he was then arrested.

{¶ 9} Defendant elected to present evidence and testified that he was in the car which had eluded Officer Wimberly but he was not the driver. According to defendant, he and some friends met a man

named Tony at a bar and later got a ride home from him. The group still had their drinks from the bar and stopped for cigars. Though he had seen Officer Wimberly's unit, Tony decided to flee because the group had open containers of alcohol. Defendant testified that he asked Tony to pull over but he refused. Defendant then asked to be let out of the car but the car spun out of control a short time later. Tony fled and defendant then exited the two-door vehicle from the driver's side door.

{¶ 10} Defendant also claimed that, when he was arrested, the officers took $2,0000 which defendant had just received from his grandfather. He stated that he has never gotten the money back from the officers.

{¶ 11} Defendant admitted on cross-examination that he has been previously convicted of attempted felonious assault on a peace officer, failure to comply with the order of a police officer, and possession of drugs. He stated that he did not know that the car Tony was driving had been stolen, and he denied that their car almost struck a nearby truck. Defendant admitted that he then fled from the police on foot.

{¶ 12} Defendant was subsequently convicted of the charge. The trial court determined that, under the circumstances of the case, imprisonment is consistent with the purposes of R.C. 2929.11 and it sentenced defendant to a four-year term, plus post-release control. Defendant now appeals and assigns two errors for our review.

{¶ 13} Defendant's first assignment of error states:

{¶ 14} "The trial court erred in denying Appellant's motion for acquittal as to the charge when the state failed to present sufficient evidence to sustain a conviction."

{¶ 15} Crim.R. 29(A) governs motions for acquittal and provides:

{¶ 16} "The court on motion of a defendant or on its own motion, after the evidence on either side is closed, shall order the entry of a judgment of acquittal of one or more offenses charged in the indictment, information, or complaint, if the evidence is insufficient to sustain a conviction of such offense or offenses."

{¶ 17} A motion for acquittal pursuant to Crim.R. 29 is, in essence, a claim of insufficient evidence. When reviewing a challenge to the sufficiency of the evidence, an appellate court must view the evidence in a light most favorable to the prosecution and determine if any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *State v. Jenks* (1991), 61 Ohio St.3d 259, 574 N.E.2d 492, at paragraph two of the syllabus, citing *Jackson v. Virginia* (1979), 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560. Thus, a reviewing court will not overturn a conviction for insufficiency of the evidence unless we find that reasonable minds could not reach the conclusion reached by the trier of fact. *State v. Treesh,* 90 Ohio St.3d 460, 2001 Ohio 4, 739 N.E.2d 749.

{¶ 18} In this instance, Officer Wimberly testified that defendant was the driver of the vehicle and that he did not respond to Officer Wimberly's attempts to stop the car. The state's evidence further established that the vehicle traveled erratically at speeds reaching fifty miles per hour, went through a red light and nearly struck a truck then spun out of control. The state's witnesses also established that defendant fled on foot but was apprehended a short time later. Viewing this evidence in a light most favorable to the prosecution, we conclude that any rational trier of fact could have found, beyond a reasonable doubt, that defendant was the driver of the car, that he failed to obey the order of a police officer, and that he drove the vehicle in a manner which caused substantial risk of physical harm to persons or property. We therefore conclude that the state's evidence was sufficient to sustain a conviction for the offense and the furthermore clause. The trial court properly denied the motion for acquittal.

{¶ 19} The first assignment of error is without merit. Defendant's second assignment of error states:

{¶ 20} "Appellant's conviction is against the manifest weight of the evidence."

{¶ 21} In reviewing a claim challenging the manifest weight of the evidence, we are directed as follows:

{¶ 22} "'The court, reviewing the entire record, weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether, in resolving conflicts in the evidence, the jury clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered.'" *State v. Thompkins,* 78 Ohio St.3d 380, 387, 1997-Ohio-52, 678 N.E.2d 541, quoting *State v. Martin* (1983), 20 Ohio App.3d 172, 175, 485 N.E.2d 717.

{¶ 23} Moreover, the power to reverse a judgment of conviction as against the manifest weight must be exercised with caution and in only the rare case in which the evidence weighs heavily against the conviction. *State v. Martin,* supra.

{¶ 24} In this matter, we cannot conclude that the jury lost its way and created a manifest miscarriage of justice in convicting defendant of the charge. The state's witnesses credibly established that defendant drove the vehicle, that the vehicle was operated in a manner which caused substantial risk of physical harm to persons or property, and that he did not stop when ordered to do so. By defendant's own admission, he was in the car and the car continued after the police attempted to stop it. Moreover, defendant's testimony lacked credibility as he claimed to run away while holding his drink from the bar. Defendant also claimed that the arresting officers stole $2,000 from him at the time of his arrest but he supplied absolutely no support for this assertion.

{¶ 25} The second assignment of error is without merit.

Affirmed.

It is ordered that appellee recover of appellant its costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Common Pleas Court to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

ANTHONY O. CALABRESE, JR., J., AND

CHRISTINE T. MCMONAGLE, J., CONCUR.

ANN DYKE
PRESIDING JUDGE

review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(E). See, also S.Ct.Prac.R. II, Section 2(A)(1).